IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1922 OF 1998

Bubna International ...Plaintiffs

Versus

Tata Telecom Limited ...Defendants

Shri K.B.Purohit i/by Purohit & Purohit for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 09, 2007.

ORAL JUDGMENT:

1. This suit was listed on board under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record affidavit of Shri Bishwambhar Dayal Bubna, Karta and Manager of B.D. Bubna HUF, the Sole Proprietor of the Plaintiffs. The said affidavit is taken on record and marked "X" for identification. The learned counsel for the Plaintiffs has also tendered on record two separate compilations of documents. The said compilations are marked "Y" (collectively) and "Z" (collectively) and the same are taken on record.

2. The Plaintiffs have filed this suit for recovery of sum of Rs.5,28,243/- together with interest on the principal amount at the rate of 24% per annum.

3. According to the case of the Plaintiffs they

were appointed as distributors of the Defendants for sale of products of Tata Keltron Ltd who were producing Tatafone range of products together with assessories and spares. The said Company merged into Tata Telecom Ltd the Defendants herein. The terms and conditions on which distributorship was offered by the Defendants to the Plaintiffs have been incorporated in the plaint. According to the case of the Plaintiffs the agreement of distributorship was forwarded by the Defendants to them. It is stated that the Plaintiffs never signed the said printed form of distributorship agreement as the agreement was not in consonance with the terms of the distributorship agreed by and between the Plaintiffs and the said Company.

4. According to the case of the Plaintiffs, they forwarded cheques in the sum of Rs.30 lakhs for initial supply of the Defendants' products and they also paid security deposit of Rs.50,000/-. According to the case of the Plaintiffs the Defendants supplied their products to the Plaintiffs and raised their invoices for the same upon the Plaintiffs. The details of the invoices have been set out in Exhibit 'C' to the plaint. As per the Defendants' pricing, the total cost of the goods comes to Rs.01,00,32,141/-. The Plaintiffs paid aggregate amount of Rs.82,23,836/- alongwith security deposit of Rs.50,000/- to the Defendants.

5. During the subsistence of the agreement, the Plaintiffs incurred certain expenses including advertising and sales promotion expenses on behalf of the Defendants. The Defendants issued 8 different credit notes in favour of the Plaintiffs. The Defendants also issued a TDS certificate in the sum of Rs.5,712/-. According to the case of the Plaintiffs cash discount allowed to the Plaintiffs was not properly calculated by the Defendants. It is alleged that the Defendants started discriminating against the Plaintiffs and were not passing on the benefit of new marketing schemes to the Plaintiffs and were not supplying right quantity of goods.

6. It is alleged that in January 1996 the Defendants failed and neglected to supply the goods ordered by the Plaintiffs though a total sum of Rs.7,50,000/- was paid by the Plaintiffs to the Defendants in January and February 1996.

7. The details of the payments actually made by the Plaintiffs totally amounting to Rs.82,23,836/- have been set out in Exhibit ‘B’ to the Plaint. In Exhibit ‘H’ to the Plaint, the Plaintiffs have given particulars of 51 debit notes issued by the Defendants. The total amount covered by the said debit notes raised by the Plaintiffs

is Rs.17,29,182/-.

8. The Defendants by their Advocates letter dated 28th January, 1998 addressed to the Plaintiffs made a demand of Rs.18,82,230/- with interest thereon at the rate of 24% per annum. The Plaintiffs replied through their Advocates letter dated 24th March, 1998 and denied the claim made by the Defendants.

9. According to the case of the Plaintiffs, considering the debit notes and total payment made by the Plaintiffs to the Defendants and considering the price of the goods supplied to the Plaintiffs, a sum of Rs.4,19,907/- is due and payable to the Plaintiffs at the foot of the distributorship account between the parties. According to the case of the Plaintiffs, they are entitled to interest at the rate of 24% per annum.

10. The compilation of documents (marked as Z) contains the total 50 invoices of the Defendants under which the goods were sent to the Plaintiffs. In the same compilation the Plaintiffs have produced the Defendants' credit notes and Plaintiffs' debit notes. The said documents have been duly proved by the affidavit of evidence of Shri Bishwambhar Dayal Bubna. The correspondence made between the parties is placed on record alongwith the other compilation (marked as Y).

In the said compilation, the Plaintiffs have produced a certificate issued by M/s.Banka and Banka Associates, Chartered Accountants who have certified on taking account that the Defendants are liable to pay a sum of Rs.4,19,407/- to the Plaintiffs.

11. The Plaintiffs have claimed interest on the outstanding amount at the rate of 24% per annum on the basis of rate of interest applied by the Defendants on their invoices. The Plaintiffs have claimed further interest from the date of the suit at the rate of 24% per annum. Considering the facts and circumstances of the case, interest from the date of the suit will have to be awarded at the rate of 12% per annum.

12. Hence, the suit is decreed in terms of prayer clauses (a) and (b) with a modification that the further interest payable will be at the rate of 12% per annum on the sum of Rs.4,19,907/- from the date of the suit till payment or realisation.

13. The Plaintiffs will be entitled to refund of court fees, if any, as per the rules.

14. Certified copy is expedited.

JUDGE